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**MOTION FOR RE-CONSIDERATION TO THE ORDER DENYING RE-SUBMIT OF  
LATE WRITTEN DIRECT STATEMENT OF EUGENE CURRY DUE TO THE ABSENCE**

**OF AN EXPLANATION OF A REASON FAILING TO MEET THE DEADLINE AND. FAILURE  
TO SEEK EXTENSION OF TIME IN ADVANCE OF THE DEAD LINE.**

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First I did not ignore the courts warning of not following its schedule regardless of its forgiveness of my in camera situation. Proof of that is me following its new 2014 PTP scheduling. After reviewing the CRB complete docket number of cases your honors are dealing with due to the streaming, interactive streaming, and the squabbling between Docket No 19- CRB-0005-WR (2021-2025) of the organizations who are involved that is trying to maintain control of the income streams (\$\$\$) of "OURS" only confirms the very issue in the DART SRF. ('COPY OF WRITTEN DIRECT STATEMENT OF THOSE INVOLVED ATTACHMENT AS EXHIBIT). SoundExchange,(CRO COLLECTION AGENCY) AFM(Collects the DART Musical Works Fund) SAG,AFTRA,AIM, SONY,UNIVERSAL,WMG, are the ones who I been fighting and suing for the last '30 years (Exhibits attached). I will include the correspondence matching the dates that your honors will see for yourself from the same docket 19-CRB-0005-WR(2021-2025), that I had to deal with their deadlines, while also dealing with CRB deadlines, and still taking care of now not only my friend, but also taking care of my 3 Goddaughters. 2,9, and 12. My situation has nothing to do with the CRB schedule. I just explaining to you which your "ORDER' express to me that was needed that was missing that your honors needed to understand "WHY"? The one thing as a pro-se individual I appreciate that the CRB do is your honors explain why and what wasn't that allows a pro-se to supply what was missing. So I will include the proof to my explanation needed by the rule of law of the matching dates including emails correspondence from my law firm SHUKAT, ARROW, HAFER, WEBBER, HERBSMAN, which is admissible in court of releases of Roc-Nation of licenses during the WDS time frame of the CRB scheduling. I thank you for your time and patience. So your honors because basically if AARC can eliminate me by default, and they already have 98% of this fund and want the remaining 2% out of which I only asking for \$1000.00, I don't see how whatever your honors decide will hurt the only party that will be left is AARC. Even under the COPYRIGHT LAW OF THE UNITED STATES AND UNDER THE WIPO "YOU CANT TAKE FROM ONE WHO IS IGNORANT TO THE RIGHTS BY LAW CANNOT TAKE 100%. The pro-se is allowed 2cents (2 to 3 1/2cents)."THAT IS THE LAW"

U.S.C €115 (c) (2) Under the law You have to give the creative being at least something. I am not giving excuses, but only trying to explain to the board the many daily operations I do along with writing and recording several artist, negotiating licenses

making sure payment is made for these licenses, dealing with constant deadlines due the rapid changes currently going on in the music industry at this moment was in this matter an honest mistake in state of being overwhelmed that we all as human beings have done at few times in life, not a daily a occurrence. Surely not punishable as if a crime was committed but a date missed that surely can be understood with a reasonable explanation why. Wish can be excused. I merely ask for forgiveness in this situation.

Thank you!

Eugene Curry

4000 Gypsy Lane #245 Philadelphia Pa.

19129 [lambchopsmusic@voicenet.com](mailto:lambchopsmusic@voicenet.com)

215-960-4802

**COPYRIGHT ROYALTY BOARD**

**COPYRIGHT OFFICE**

**WASHINGTON D.C.**

**In re:**

**Distribution of Digital Audio Recording**

**CONSOLIDATED**

**Royalty Funds.**

**DOCKET NO. 2008-3 CRB DD**

**(2007 -2011 SRF)**

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Eric Weissman Music Licensing Inc.

Via Email  
September 26, 2019

Michael B. Frisch, Esq.  
Shukat Arrow Hafer Weber & Herbsman, LLP  
494 Eighth Avenue, 6<sup>th</sup> fl.  
New York, NY 10003

Re: Roc Nation Records, LLC -w- Tajai Music - Use of "Somebody Love You Baby (You Know Who It Is)" in the musical composition entitled "So Drippy" as performed by Casanova (featuring Gunna)

Dear Mike:

I am writing on behalf of Roc Nation Records, LLC to confirm that Tajai Music has agreed to license to Roc Nation Records, LLC and its designees, in perpetuity, throughout the world, in all audio-configurations now known or hereinafter devised and music videos, the use of the musical composition (the "Original Composition") entitled "Somebody Love You Baby (You Know Who It Is)" written by Eugene Curry and Walter Sigler, as embodied in the musical composition (the "Casanova Composition") entitled "So Drippy" as performed by the Roc Nation Records, LLC recording artist p/k/a Casanova. In consideration of the foregoing license, and in the event that the Original Composition as embodied in the Casanova Composition is commercially exploited, Tajai Music shall be entitled to a ten percent (10.00%) [twenty percent (20.00%) prorated based on Tajai Music's fifty percent (50.00%) interest in the Original Composition] interest in the copyright of the Casanova Composition. Mechanical royalties shall be payable at the full statutory rate. In addition, Roc Nation Records, LLC shall arrange to pay to Tajai Music a one-time only non-recoupable fee in the amount of Two Thousand (\$2,000.00) Dollars.

Tajai Music warrants and represents that it owns and controls a fifty percent (50.00%) interest in the Original Composition throughout the world and has the right to grant the rights granted herein. Tajai Music shall indemnify Roc Nation Records, LLC and its designees against any claims arising from Tajai Music's breach of the warranties and representations contained herein.

If the foregoing does not reflect your understanding of our agreement, please notify me immediately.

As soon as I receive the complete writer/publisher information, I'll forward it to you so that you may issue more formal co-publishing agreements.

Best regards.

Very truly yours,

  
Eric D. Weissman

5 Columbus Circle, 11<sup>th</sup> fl.  
New York, NY 10019  
(212) 707-8804 (ph)  
(212) 707-8952 (fax)

row Hafer Weber & Herbsman LLP  
111 West 57th St, Suite 1120  
New York, NY 10019

Dear Publisher:

In reliance upon your representation that you have the right to license the composition listed below pursuant to the Copyright Law of the United States Of America, we are requesting a mechanical reproduction license covering the following use:

TITLE: See Attached Schedule A

TIMING: See Attached Schedule A

WRITER(S): See Attached Schedule A

PERCENTAGE: See Attached Schedule A

PUBLISHER: Tajai Music Inc

Mechanical Royalty, Physical Product Rate: See Attached Schedule A

Mechanical Royalty, Permanent Download Rate: See Attached Schedule A



Rate Pursuant Clause: See Attached Schedule A

ARTIST: Ali Caldwell

UPC NO.: See Attached Schedule A

LABEL: UMG Recordings, Inc. (THE FOUR/FOX-REPUBLIC)

ISRC NO.: See Attached Schedule A

ALBUM TITLE: Somebody Loves You Baby

RELEASE DATE: See Attached Schedule A

CONFIGURATION: See Attached Schedule A

Please issue license to: UMG Recordings, Inc. (THE FOUR/FOX-REPUBLIC)  
Attn: Jennifer Liou  
P.O. Box 4012  
Woodland Hills, CA 91365-4012

Sincerely,

Jennifer Liou  
Copyright  
Administration UMG  
Recordings, Inc.  
Phone: 818-286-8901  
Fax: 818-286-4707



## Schedule A

Artist: Ali Caldwell

Release Title: Ali Caldwell / The Four Performance (Digital)

Label: THE FOUR/FOX-REPUBLIC

### Products:

UPCPhys/Dig	Config	ProductTitle	Version	Release Date
00602567891420	Digital	eSingle Audio/Single	Somebody Loves You	The Four
Track HD		Baby	Performance	
00602567891468	Digital	E Single Audio	Somebody Loves You	The Four
Baby			Performance	

Publisher: Tajai Music Inc

Rate ID # 41254

Agreement Ref(s):

PDL Rate:

STAT

PDL Rate Type:

STAT

Split%	IsControlled	Base Rate	RateType	RateId	
<u>00602567891420 - Digital - eSingle Audio/Single Track HD - The Four Performance - 07/12/2018</u>					
Somebody Loves You Baby (Curry/Sigler) USUM71809851 The Four Performance 02:25					
Eugene E. Curry	41.67	N	STAT	STAT	41254
<u>00602567891468 - Digital - E Single Audio - The Four Performance - 07/12/2018</u>					
Somebody Loves You Baby (Curry/Sigler) USUM71809851 The Four Performance 02:25					
Eugene E. Curry	41.67	N	STAT	STAT	41254

Universal Music Group

P.O. Box 4012 Woodland Hills CA 91365-4012  
Page 2 / 2

July 01, 2019

[www.umusic.com](http://www.umusic.com)



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Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

*In re*

Determination of Rates and Terms for  
Digital Performance of Sound Recordings  
and Making of Ephemeral Copies to  
Facilitate Those Performances (*Web V*)

Docket No. 19-CRB-0005-WR (2021-2025)

WRITTEN DIRECT STATEMENT  
OF SOUNDEXCHANGE, INC., AMERICAN FEDERATION OF  
MUSICIANS OF THE UNITED STATES AND CANADA, SCREEN  
ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND  
RADIO ARTISTS, AMERICAN ASSOCIATION OF INDEPENDENT  
MUSIC, SONY MUSIC ENTERTAINMENT, UMG RECORDINGS, INC.,  
WARNER MUSIC GROUP CORP., AND JAGJAGUWAR INC.

Volume 1: Introductory Materials

**September 26, 2019**

**Table of Contents**  
**Written Direct Statement of SoundExchange, Inc., et al.**  
**Docket No. 19-CRB-0005-WR (2021-2025)**

**Volume 1: Introductory Materials**

- A: Introductory Memorandum**
- B: Proposed Rates and Terms**
- C: Index of Witness Statements**
- D: Index of Exhibits**

**E: Declaration and Certification Regarding Restricted Materials**

**Volume 2: Witness Testimony**

**Volume 3: Exhibits**

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

*In re*

Determination of Rates and Terms for  
Digital Performance of Sound  
Recordings and Making of Ephemeral  
Copies to Facilitate those Performances  
(*Web V*)

Docket No. 19-CRB-0005-WR  
(2021-2025)

INTRODUCTORY MEMORANDUM TO  
THE  
WRITTEN DIRECT STATEMENT OF SOUNDEXCHANGE, INC., AMERICAN  
FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, SCREEN  
ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO  
ARTISTS, AMERICAN ASSOCIATION OF INDEPENDENT MUSIC, SONY MUSIC  
ENTERTAINMENT, UMG RECORDINGS, INC., WARNER MUSIC GROUP CORP.,  
AND JAGJAGUWAR INC.

SoundExchange, Inc., the American Federation of Musicians of the United States and Canada (“AFM”), Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”), the American Association of Independent Music (“A2IM”), Sony Music Entertainment (“Sony”), UMG Recordings, Inc. (“UMG”), Warner Music Group Corp. (“WMG”), and Jagjaguwar Inc. (collectively, “SoundExchange”), through their undersigned counsel, respectfully submit this Introductory Memorandum to SoundExchange’s written direct statement in accordance with 37 C.F.R. § 351.4. This memorandum describes the contents of SoundExchange’s written direct statement and briefly summarizes the testimony of its witnesses.

## **OVERVIEW OF TESTIMONY**

**SoundExchange requests that the Copyright Royalty Judges set the royalty rates that commercial webcasters will pay at \$0.0031 per performance for a commercial subscription service (as defined in 17 U.S.C. § 114(j)(14)), and \$0.0028 per performance for a commercial**

nonsubscription service (as defined in 17 U.S.C. § 114(j)(9)), beginning in 2021.

SoundExchange requests that the Judges increase the minimum fee from \$500 per channel per year to \$1,000 per channel per year, subject to a cap of \$100,000 per year for large commercial webcasters. For noncommercial services, SoundExchange requests that the (increased) minimum fee continue to cover 159,140 aggregate tuning hours per channel per month, and that additional usage continue to bear the same per-performance rate as for commercial nonsubscription services. SoundExchange requests that these per-performance rates be adjusted for subsequent years of the rate period based on changes in the CPI-U, in the same manner as currently provided in 37 C.F.R. § 380.10(c).

SoundExchange proposes continuing the current allocation of statutory royalty payments 5% to Section 112(e) and 95% to Section 114.

SoundExchange's rate proposal for commercial webcasters relies on the analysis of two economic experts, Mr. Jonathan Orszag and Professor Bobby Willig, both of whom are affiliated with the economic consulting firm of Compass Lexecon. Professor Willig's analysis models rates in the relevant markets based on a Shapley Value model, and Mr. Orszag proposes rates based on a benchmarking analysis using the rates voluntarily negotiated by record companies and on-demand streaming services. Their two approaches yield generally consistent results: for subscription services, the Shapley Value analysis produces a rate of \$.0030 per play, while the benchmark analysis produces a rate of \$.0033 per play; for nonsubscription services, the Shapley Value analysis produces a rate of \$.0028 per play, and the benchmark analysis produces a rate of \$.0025 per play.

Both Professor Willig and Mr. Orszag gave separate consideration to the subscription and nonsubscription noninteractive markets. Among other things, Professor

Willig's Shapley Value model incorporates the separate opportunity costs incurred by the record companies when licensing subscription and nonsubscription services. These inputs were based a survey by Professor Gal Zauberman, which explores the switching behavior of survey respondents who currently use one or both types of such services. Mr. Orszag's benchmarking analysis also separately examines the subscription and nonsubscription markets, taking into account the difference in willingness to pay by users of, and subscribers to, those two types of services.

SoundExchange presents additional economic testimony from MIT Professor Catherine Tucker. Professor Tucker's academic specialty lies in studying how the process of digitization has shaped markets, especially those which are supported by digital advertising. Her testimony traces recent trends in the economics of the digital music industry, and examines the financial prospects and business models of several large webcasting services. She concludes that there have been significant shifts in the industry since *Web IV*, and there is every reason to believe that the services are well-positioned to pay higher statutory royalties and will continue to experience improved revenue and lower costs over the course of the five-year rate period.

The economic analysis is informed by the testimony of the fact witnesses, who will provide the Judges with the perspective of the major record companies, the indies, and the artist community. A consistent theme emerges from this testimony – the market for the sale and distribution of sound recordings has changed substantially since the time of the *Web IV* proceedings. In particular, interactive streaming services have grown dramatically and now represent the most critical component of the sound recording ecosystem. The U.S. retail revenue generated by interactive streaming services has grown from \$600 million in

2012, to \$1.6 billion in 2015, to an estimated \$6.9 billion in 2019. Meanwhile, sales of CDs and digital downloads have declined. The changes are reflected on the record companies' income statements. For example, in FY 2019, Sony Music Entertainment generated [REDACTED] of its revenues from all sources of physical product and digital download sales, while just two interactive streaming services, Spotify and Apple Music, generated [REDACTED] of its FY 2019 revenues.

As interactive services have grown, they have also evolved. Playlisting and other forms of “lean back” listening on interactive services already were growing at the time of *Web IV*, but that trend has continued and even accelerated since. Critically for the copyright owners, the interactive services began to offer their own curated playlists. Because the service-generated playlists have become so popular, and so instrumental in helping subscribers discover new music (which the subscribers then add to their own playlists and share with friends), the interactive services wield significant influence over the success or failure of new releases.

These facts have a number of consequences for the economic analysis.

*First*, although the Judges have concluded in the past that the market for licensing sound recordings to interactive services is not effectively competitive, that is no longer the case.

[REDACTED]  
[REDACTED]

[REDACTED]

]. Mr. Orszag therefore concludes that there is no reason to adjust his benchmark rates to correct for any alleged lack of effective competition in the benchmark market.



***Second*, the increasing use of curated playlists, algorithmic streaming and other forms of lean-back listening offered by the benchmark interactive services has rendered them even more comparable to target market noninteractive services. As one industry observer put it, “Pandora was meant to be different to Spotify, and it was, until Spotify started stealing Pandora’s clothes Pandora grew its user base by delivering a lean back, but personalized listening experience. Spotify soon realized the value of lean back listening, bringing in a vast selection of curated playlists, directly and via partners.” In turn, interactive services like Spotify have become significant competitors for noninteractive services. Indeed, Pandora has found that “[REDACTED]**

],” and  
[

]. Consequently, the interactive streaming services are even more comparable to noninteractive streaming services today than they were at the time of *Web IV*, and therefore at least as good if not better benchmarks.

***Third*, the growing importance of interactive streaming services has a direct and important impact on how the record companies go about licensing noninteractive services (or would, in an unregulated market). Interactive subscription streaming services [**

[REDACTED] provide the largest share of record company revenues; [REDACTED]

[REDACTED] ]. Free-to-the-consumer noninteractive services compete with and substitute for subscription interactive services. That is one of the conclusions of the Zauberman survey, and it just makes sense. As Professor Tucker states, “zero as a price is a powerful anchor for consumers.” On the other hand, ad-supported services have been used successfully by some subscription interactive services as an introductory tier of service from which the user can be upsold to the subscription interactive service.

Given that ad-supported services may either promote or substitute for subscription interactive services, the record companies have been willing to license ad-supported streaming

services that are offered alongside an interactive subscription tier, [

[REDACTED]

[REDACTED].

As Professor Tucker points out, this [REDACTED] has important implications for the statutory license rates. Rates set too low for ad-supported noninteractive services will distort the market to allow stand-alone ad-supported services to compete more effectively with subscription services, and will reduce the upsell incentives for services that offer both ad-supported and subscription tiers of services. Neither of these outcomes is consistent with the willing buyer/willing seller standard. [

[REDACTED]

[REDACTED]

]. Instead, the willing buyer/willing seller rate should reflect the opportunity cost incurred by record companies as a result of the statutory license for noninteractive services as incorporated in Professor Willig's Shapley Value model.

## **CONTENTS OF SOUNDEXCHANGE'S WRITTEN DIRECT STATEMENT**

**Volume 1** contains (A) this Introductory Memorandum; (B) SoundExchange's Proposed Rates and Terms; (C) an index of SoundExchange's witness testimony; (D) an index of SoundExchange's exhibits; and (E) a declaration regarding Protected Material. **Volume 2** contains the written direct testimony of SoundExchange's four expert witnesses and ten fact witnesses, as well as designated testimony from prior proceedings. **Volume 3** contains exhibits to the written direct testimony of SoundExchange's witnesses.

Pursuant to 37 C.F.R. § 303.5, § 303.6, and the Court's Orders of February 6, 2019 and June 27, 2019, SoundExchange is filing the materials in Volumes 1-3 through eCRB. The written direct testimony of some of SoundExchange's witnesses and some of SoundExchange's exhibits contain confidential information as that term is defined in Part III of the Protective Order entered by this Court on June 24, 2019 (the "Protective Order"). Pursuant to Part IV(A) of the Protective Order, SoundExchange has marked Restricted portions of its written direct statement that contain confidential information and has also submitted a declaration listing a description of the Restricted material.

## **SUMMARY OF THE WRITTEN TESTIMONY**

SoundExchange's written direct statement includes the written testimony of the following expert and fact witnesses:

**A. Expert Witnesses**

**Robert Willig** is a Professor of Economics and Public Affairs Emeritus at Princeton University, where he has held a joint appointment in the Economics Department and at the Woodrow Wilson School of Public and International Affairs since 1978. He has previously served as the Chief Economist for the Antitrust Division of the U.S. Department of Justice. Professor Willig utilizes a Shapley Value model to determine the royalty rates for ad-supported noninteractive and subscription noninteractive services that would result from arm's length negotiations in an unregulated market between a willing buyer and a willing seller. Shapley Values are a generalized solution to the problem of how to apportion among the members of a multi-party bargaining group the surplus created by their productive cooperation with each other. Using this modeling approach, Professor Willig concludes that a reasonable royalty rate for adsupported noninteractive webcasting beginning in 2021 is \$0.0028 per play and for subscription noninteractive webcasting is \$0.0030 per play (or \$1.95 per subscriber per month). Professor Willig finds that his Shapley Value results are robust to numerous alternative model specifications, different input data, and even an alternative multi-party bargaining framework known as Nash-in-Nash.

**Jonathan Orszag** is a Senior Managing Director and member of the Executive Committee of the economic consulting firm of Compass Lexecon, LLC. He holds a M.Sc. from Oxford University, which he attended as a Marshall Scholar, and an undergraduate degree, *summa cum laude*, from Princeton University. Mr. Orszag utilizes a benchmarking approach to determine the royalty rates for noninteractive subscription and ad-supported services that

would result from arm's length negotiations in an unregulated market between a willing buyer and a willing seller. He concludes that interactive subscription services represent the most reasonable and appropriate benchmark, in part because interactive and noninteractive services are increasingly comparable in terms of the functionality they offer to consumers. Mr. Orszag adjusts that benchmark to account for the remaining differences in functionality between interactive subscription services and the noninteractive subscription and ad-supported services that pay royalties under the statutory rates—namely, interactivity. He concludes that due to the evolution of the music industry and growth of interactive services, the benchmark rates do not need to be further adjusted to reflect effective competition. Mr. Orszag also considered whether additional adjustments were necessary to account for other factors—including promotion and substitution effects and type of record label—and explained why he declined to make any further adjustments. Ultimately, Mr. Orszag's benchmarking analysis yields a royalty rate of \$0.0033 per performance for commercial subscription noninteractive services and \$0.0025 per performance for commercial ad-supported services.

Catherine Tucker is the Sloan Distinguished Professor of Management Science at MIT

Sloan School of Management at the Massachusetts Institute of Technology ("MIT").

Professor Tucker joined the MIT faculty after completing her Ph.D. in Economics at Stanford University, and her undergraduate work at Oxford University. She is an expert in the economics of digital markets. Professor Tucker's testimony traces recent economic trends in the digital music industry, and describes the significant changes that have occurred since the *Web IV* proceeding. She further analyzes the financial performance of

Pandora and iHeartRadio, as well several recent shifts in their businesses—including SiriusXM’s acquisition of Pandora, iHeart’s emergence from bankruptcy, the introduction of additional tiers of on-demand service, and improvements in the services’ advertising and customer acquisition capabilities. She concludes that these commercial webcasters are well positioned to pay higher statutory royalties. Professor Tucker also examines the financial performance of the five largest noncommercial webcasters, and concludes that they are well-positioned to pay the increased royalty rates that

SoundExchange proposes. Her analysis shows [REDACTED] that [REDACTED]; and, even the increase

in “excess usage” fees that SoundExchange proposes would raise the royalty burden among the

five largest noncommercial royalty payers to at most [REDACTED]

].

Gal Zauberman, Ph.D., is the Joseph F. Cullman 3rd Professor of Marketing at the Yale School of Management. Professor Zauberman conducted a survey to examine how consumers of webcasting services would replace their music-listening time if their free or paid Streaming Radio services were no longer available. Professor Zauberman’s survey collected data on (i) what music-listening options respondents currently use; (ii) what replacement musiclistening options they would choose if their paid or free Streaming Radio services were no longer available; and (iii) how they would allocate their replacement time among these options. Professor Willig (whose testimony is discussed above) uses these survey results as inputs for his opportunity costs analysis and his Shapley model.

**B. Fact Witnesses**

**Aaron Harrison** is Senior Vice President, Business & Legal Affairs, Digital, for UMG

Recordings, Inc. (“UMG”). He negotiates agreements with various digital music service providers that use the sound recording repertoire of UMG and its digitally distributed independent labels. In his testimony, Mr. Harrison explains that the market for sound recordings has changed over the last several years. Mr. Harrison also explains that changes in the market for sound recordings have empowered major on-demand music services, which generate a

substantial share of UMG’s revenue [ f

[REDACTED]

]. Finally, Mr. Harrison describes the importance of subscription on-

demand services and discusses the circumstances under which UMG might license ad-supported or mid-tier digital music services.

**Reni Adadevoh** is Vice President, Legal and Business Affairs, for Warner Music International, which is a London-based division of Warner Music Group (“WMG”). She negotiates agreements with digital music services that use the sound recording repertoire of WMG and its digitally distributed independent labels. In her testimony, Ms. Adadevoh provides

perspective on [REDACTED] [

[REDACTED]

]. She also discusses [REDACTED] [

[REDACTED]

]. Finally, she explains [

[REDACTED]



[REDACTED]  
].

Mark Piibe is the Executive Vice President for Global Business Development and Digital Strategy at Sony Music Entertainment (“Sony”). In addition to overseeing efforts to refine digital strategy and maximize digital revenue, he oversees business and partner development, and negotiates licenses with digital music services. Mr. Piibe describes the changing landscape of the recorded music industry and the importance of subscription streaming services that permit users to access recorded music on-demand. He discusses Sony’s relationship with key on-demand services and emphasizes that [REDACTED]

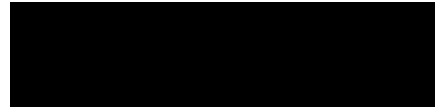
[REDACTED] Sony [REDACTED]. He also explains why, [REDACTED]

[REDACTED]  
].

Jason Gallien is the Chief Financial Officer for North America for Universal Music

Group. In his testimony, Mr. Gallien discusses how the market for recorded music in the United States has changed since the last webcasting proceeding. He explains that UMG has become substantially and increasingly dependent on streaming revenue. He also explains that the services most critical to UMG's bottom line are those that offer consumers the ability to access

recordings on-demand. Mr. Gallien illustrates that UMG [



]. However, he also emphasizes that every source of revenue

is important to UMG, including webcasting services. He notes that total royalties received from statutory services are far below those paid by on-demand services, even though webcasting services boast a substantial number of users and benefit from the significant risks and the significant investments that UMG must undertake to create, produce, market, manufacture, and distribute the sound recordings that provide webcasters with music content for their service.

Jennifer Fowler is Senior Vice President, Commercial Business & Marketing, for Sony Music Entertainment. In addition to managing relationships with digital partners that provide on-demand and customized streaming services, she develops strategies to promote Sony's content and increase artist exposure. In her testimony, Ms. Fowler explains that major on-demand services like Spotify and Apple have tremendous power over the success of a particular artist or track for several reasons, including that they generate a substantial amount of revenue and provide a significant source of music discovery. In addition to discussing why major on-demand services have become so

important, Ms. Fowler describes how her team operates and how other services and partners fit within her team's broader strategy.

Mike Sherwood is the Senior Vice President, Revenue & Commercial Accounts, for Warner Records. He oversees all of Warner Records' revenue generating accounts, including accounts with streaming services like Apple Music, Spotify, and Amazon. In his testimony, Mr. Sherwood discusses the importance of major on-demand streaming services and describes how their emergence has transformed the way that Warner Records works to develop artists. He

explains that playlists offered by on-demand music services [REDACTED] are

an essential part of digital distribution and promotion, and can help to determine the commercial success of an artist or track. He further explains how platform real estate and ancillary marketing features on the on-demand services can affect exposure. In addition to discussing the discretion that on-demand exercise over playlists, platform real estate, and ancillary marketing features, Mr. Sherwood provides perspective on how the emergence of on-demand services has affected particular label functions.

Raymond Hair is the International President of the American Federation of Musicians of the United States and Canada ("AFM"). His testimony addresses the importance of statutory royalties to performing artists, and expresses the AFM's support for the designation of SoundExchange as the sole collective to collect and distribute the statutory royalties at issue in this proceeding.

John Strohm is the President of Rounder Records. Mr. Strohm explains the steps that Rounder takes to bring its music to the world, including marketing and promotion to

streaming services. He also discusses the importance of streaming royalties to Rounder's business, and the centrality of streaming services in promoting the discovery of Rounder's artists and sustaining the development of the roots and Americana music on which Rounder focuses.

Mary Gauthier is a professional musician, recording artist, and songwriter. Ms. Gauthier discusses her background and journey to her calling as a musician and songwriter, the process by which she creates and disseminates her music, and the centrality of streaming services and streaming royalties for artists. She requests that the Judges raise the royalty rates so that artists receive fair compensation for their important work.

Jonathan Bender is the Chief Operating Officer of SoundExchange. His testimony provides background information about SoundExchange and the services it provides, including the major technology initiatives it has undertaken to support the various stages of the royalty processing and distribution process. Mr. Bender explains why SoundExchange's sophisticated systems, authoritative repertoire database and wealth of talent all support designating SoundExchange as the sole collective for collecting and distributing royalties from webcasters.

In addition, Mr. Bender explains that for webcasters not covered by applicable settlements, SoundExchange proposes retaining the same basic rate structure as currently in effect, with increases in the royalty rates themselves. SoundExchange proposes increasing the minimum fee from \$500 to \$1000 to reflect inflation, increasing royalty rates, current costs of administering the statutory license and generally increasing per-channel usage. SoundExchange proposes keeping substantively the same allocation of

royalties between performances and ephemeral recordings. SoundExchange proposes that the Judges generally conform the webcasting regulations to the PSS/SDARS regulations, except where there is a good reason not to. He specifically addresses issues with respect to use of account numbers by licensees, submission of statements of account showing the application of minimum fees, proxy distribution when SoundExchange is unable to obtain a usable report of use, disposition of unclaimed funds, audit provisions, reporting of ISRCs, and reporting of excluded recordings.

**C. Designated Testimony**

George S. Ford. SoundExchange is designating Dr. George S. Ford's direct case testimony from Docket No. 2009-1 CRB *Webcasting III*. Consistent with 37 C.F.R. § 351.4(b)(2), SoundExchange is including a copy of Dr. Ford's Written Direct Testimony and a transcript of Dr. Ford's trial testimony. Dr. Ford's testimony supports SoundExchange's rate proposal for ephemeral copies under Section 112(e) of the Copyright Act. Dr. Ford concludes that ephemeral copies clearly have economic value and that, based on economic theory and marketplace evidence, the value of those ephemeral copies is best expressed as a fixed percentage of the overall royalty rate paid by webcasters for combined activities under Sections 112(e) and 114.

.  
Dated: September 23, 2019

Respectfully submitted,

By: /s/ David A. Handzo

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David A. Handzo (D.C. Bar No. 384023)

**dhandzo@jenner.com**

**Steven R. Englund (D.C. Bar No. 425613)**

**senglund@jenner.com**

**JENNER & BLOCK LLP**

**1099 New York Avenue, N.W., Suite 900**

**Washington, DC 20001**

**Tel.: 202-639-6000**

**Fax: 202-639-6066**

*Counsel for SoundExchange, Inc., American Federation of Musicians of the United States and Canada, Screen Actors Guild-American Federation of Television and Radio Artists, American Association of Independent Music, Sony Music Entertainment, UMG Recordings, Inc., Warner Music Group Corp., and Jagjaguwar Inc.*

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

*In re*

**Determination of Rates and Terms for  
Digital**

**Performance of Sound Recordings and**

**Making of Ephemeral Copies to Facilitate  
Performances (*Web V*)**

**Docket No. 19-CRB-0005-WR (2021-2025)**

**PROPOSED RATES AND TERMS OF  
SOUNDEXCHANGE, INC.  
AND ARTIST AND COPYRIGHT OWNER  
PARTICIPANTS**

**SoundExchange, Inc., American Federation of Musicians of the United States and  
Canada, Screen Actors Guild–American Federation of Television and Radio Artists,  
American  
Association of Independent Music, Sony Music Entertainment, UMG Recordings, Inc.,  
Warner Music Group Corp., and Jagjaguwar Inc. (collectively, “SoundExchange”)  
propose the royalty rates and terms set forth herein for eligible nonsubscription  
transmissions and transmissions made by a new subscription service other than a service  
as defined in 37 C.F.R. § 383.2(f) (collectively, “Webcast Transmissions”), together with  
the making of ephemeral recordings necessary to facilitate Webcast Transmissions, under  
the statutory licenses set forth in 17 U.S.C.  
§§ 112(e) and 114 during the period January 1, 2021 through December 31, 2025.  
SoundExchange has attached a “redlined” version of proposed regulations setting forth its  
requested royalty rates and terms in more detail. Pursuant to 37 C.F.R. § 351.4(b)(3),**

SoundExchange reserves its right to change its requested rates and terms at any time during the proceeding up to and including the filing of proposed findings of fact and conclusions of law.

## **I. SETTLEMENTS**

Contemporaneous with the filing of its written direct statement, SoundExchange, Inc. is filing joint motions to adopt settlements of this proceeding with College Broadcasters, Inc. and National Public Radio, Inc. SoundExchange respectfully requests prompt adoption by the Copyright Royalty Judges of the proposed regulations appended to those joint motions as the statutory rates and terms for the activities addressed therein.

## **II. ROYALTY RATES**

For activities not covered by its settlements, SoundExchange requests royalty rates as set forth below.

### **A. Minimum Fee**

Pursuant to 17 U.S.C. §§ 112(e)(3) and (4) and 114(f)(1)(B), SoundExchange requests that all Licensees (as defined in Section 380.2 of the attached proposed regulations) pay an annual, nonrefundable minimum fee of \$1000 for each calendar year or part of a calendar year of the rate period during which they are Licensees, for each individual channel and each individual station, subject to an annual cap of \$100,000 for a Commercial Webcaster (as defined in Section 380.2 of the attached proposed regulations) with 100 or more channels or stations. The minimum fee is to be credited toward royalties payable for the same calendar year.

### **B. Commercial Webcasters**



SoundExchange requests that in 2021, Commercial Webcasters pay a royalty of \$0.0031 per performance for Webcast Transmissions and related ephemeral recordings made as part of a subscription service (as defined in 17 U.S.C. § 114(j)(14)) and \$0.0028 per performance for Webcast Transmissions and related ephemeral recordings made as part of a nonsubscription service. SoundExchange requests that these per-performance rates be adjusted for subsequent years of the rate period based on changes in the CPI-U, in the same manner as currently provided in 37 C.F.R. § 380.10(c).

**C. Noncommercial Webcasters**

For Webcast Transmissions and related ephemeral recordings by Noncommercial Webcasters (as defined in Section 380.2 of the attached proposed regulations), SoundExchange requests no royalties beyond payment of the \$1000 minimum fee for up to 159,140 Aggregate Tuning Hours (as defined in Section 380.2 of the attached proposed regulations) per channel or station per month. If, in any month, a Noncommercial Webcaster makes Webcast Transmissions in excess of 159,140 Aggregate Tuning Hours on any individual channel or station, SoundExchange requests that the Noncommercial Webcaster pay per-performance royalty fees for the excess Webcast Transmissions at the same per-performance rate as a Commercial Webcaster.

**D. Allocation between Section 112(e) and 114**

SoundExchange proposes continuing the current allocation of statutory royalty payments 5% to Section 112(e) and 95% to Section 114 (*see* 37 C.F.R. § 380.10(d)). However, SoundExchange proposes certain clarifying changes in the regulatory language expressing that allocation.

### **III. TERMS AND OTHER REGULATORY LANGUAGE**

Certain terms are set forth in SoundExchange's settlements. The settlements also assume that the generally-applicable provisions in Subpart A will apply to activities covered by the settlements, to the extent consistent with the settlements.

SoundExchange proposes that the regulations currently set forth in 37 C.F.R. Part 380 Subparts A and B generally be conformed to the Copyright Royalty Judges' revisions in *SDARS*

*III* of the regulations in 37 C.F.R. Part 382, with certain conforming and editorial changes, except where there are good reasons for differences. The specific regulatory language

SoundExchange proposes, along with drafting notes explaining that language, is set forth in the attachment to this document.

In connection therewith, and notwithstanding its desire generally to track the *SDARS III* terms, SoundExchange proposes to address certain material terms issues as follows:

- **Use of Account Numbers.** Given the large number of Licensees and the decision by some of them to report and pay for different scopes of usage and under different names, SoundExchange proposes new Sections 380.3(e) and 380.4(a)(3) that would require a Licensee to use a SoundExchange-provided account number on or with its payments, statements of account and reports of use, if SoundExchange has notified the Licensee of such an account number.
- **Statements of Account Showing Application of Minimums.** To encourage timely and accurate calculation of statutory royalty obligations and provide clarity about whether a Licensee has missed a payment or is recouping a minimum fee payment, SoundExchange proposes new language in Section 380.4(a) of its proposed

regulations that would require a Licensee that has made a minimum fee payment for a year and is required to provide reports of use to provide statements of account throughout the year at the same time as the licensee's reports of use, even if no further payment is then due.

- **Proxy Distribution.** To allow SoundExchange to distribute to artists and copyright owners statutory royalties for which it has not been able to obtain a report of use from the Licensee, SoundExchange proposes new language in Section 380.5(a)(1) of its proposed regulations that would allow it to distribute such royalties based on proxy usage data.
- **Unclaimed Funds.** To reflect Congress' decision in the Orrin G. Hatch–Bob Goodlatte Music Modernization Act to preempt state laws concerning the disposition of unclaimed funds, SoundExchange proposes in Section 380.5(b) of its proposed regulations language concerning the disposition of unclaimed funds that is based on the pre-*Web IV* webcasting rate regulations.
- **Audit Provisions.** To maintain appropriate incentives for the large community of Licensees to comply with their payment obligations under the Judges' regulations, and to make it practicable for SoundExchange to discover underpayments through the audit process, SoundExchange proposes a number of changes to the audit provisions of the webcasting regulations, which are located in Section 380.7 of its proposed regulations.
- **Reporting of ISRCs.** To facilitate accurate and prompt matching of recordings reported in Licensees' reports of use, SoundExchange proposes a new Section 380.8

of its proposed regulations that would require webcasters to use International Standard Recording Codes (ISRCs) in their reporting, where available and feasible.

- **Reporting of excluded sound recordings.** To avoid payment errors and disputes due to incorrect classification of recordings as directly licensed, SoundExchange proposes a new Section 380.10(e) of its proposed regulations that would require webcasters (like SDARS providers) to report recordings excluded from their royalty calculations as directly licensed.

Dated: September 23, 2019

Respectfully submitted,

By: /s/ David A. Handzo

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David A. Handzo (D.C. Bar No. 384023)

dhandzo@jenner.com

Steven R. Englund (D.C. Bar No. 425613)

senglund@jenner.com

**JENNER & BLOCK LLP**

1099 New York Avenue, N.W., Suite 900

Washington, DC 20001

Tel.: 202-639-6000

Fax: 202-639-6066

*Counsel for SoundExchange, Inc., American Federation of Musicians of the United States and Canada, Screen Actors Guild-American Federation of Television and Radio Artists, American Association of Independent Music, Sony Music Entertainment, UMG Recordings, Inc., Warner Music Group Corp., and Jagjaguwar Inc.*

**Attachment**  
**SoundExchange's Proposed Regulations**

**PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE  
NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR  
THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE  
TRANSMISSIONS**

**Subpart A—Regulations of General Application**

[Note: Capitalization in caption conformed to 37 C.F.R. Part 382.]

**§ 380.71 Definitions.**

[Note: Definitions moved to the beginning of the subpart based on the Judges' finding in *SDARS III* that placement of definitions at the end is "counterintuitive." 83 Fed. Reg. 65,210, 65,261 (Dec. 19, 2018). Marked changes show differences between this proposal and current 37 C.F.R. § 380.7, but not the relocation of the provision within the regulations.]

For purposes of this subpart, the following definitions apply:

[Note: Introductory phrase not conformed to 37 C.F.R. § 382.1, because it was added by the Judges subsequent to *SDARS III*. See 84 Fed. Reg. 32,296, 32,313 (July 8, 2019). Reference to subpart changed to part because SoundExchange's settlements with College Broadcasters, Inc. and National Public Radio, Inc. assume that the general definitions will apply to the extent consistent with the settlements.]

*Aggregate Tuning Hours (ATH)* means the total hours of programming that the Licensee has transmitted during the relevant period to all listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, less the actual running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under title 17, United States copyright law Code. By way of example, if a service transmitted one hour of programming containing Performances to 10 listeners, the service's ATH would equal 10 hours. If three minutes of that hour consisted of transmission of a directly-licensed recording, the service's ATH would equal nine hours and 30 minutes (three minutes times 10 listeners creates a deduction of 30 minutes). As an additional example, if one listener listened to a service for

10 hours (and none of the recordings transmitted during that time was directly licensed), the service's ATH would equal 10 hours.

[Note: Reference to Title 17, rather than copyright law, as revised by the Judges in their rulemaking under the Music Modernization Act but not yet implemented in the C.F.R. by the Office of the Federal Register and the Government Publishing Office. *See* 84 Fed. Reg. 32,296, 32,313 (July 8, 2019).]

*Collective* means the collection and distribution organization that is designated by the Copyright Royalty Judges, ~~and which, for the current rate period, is SoundExchange, Inc.~~

[Note: Reference to SoundExchange deleted here to conform to 37 C.F.R. § 382.1. SoundExchange is proposed to be designated as the Collective in § 380.3(a).]

*Commercial Webcaster* means a Licensee, other than a Noncommercial Webcaster, Noncommercial Educational Webcaster, or Public Broadcaster, that makes Ephemeral Recordings and eligible digital audio transmissions of sound recordings pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(d)(2).

[Note: Reference to Noncommercial Educational Webcaster added to reflect SoundExchange's settlement with College Broadcasters, Inc.]

*Copyright Owners* means sound recording copyright owners, and rights owners under 17 U.S.C. 1401(l)(2), who are entitled to royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

[Note: No change proposed. Provision is as revised by the Judges in their rulemaking under the Music Modernization Act. *See* 84 Fed. Reg. 32,296, 32,313 (July 8, 2019).]

*Digital ~~a~~Audio ~~t~~Transmission* has the same meaning as in 17 U.S.C. 114(j)(5).

[Note: Changes to conform to 37 C.F.R. § 382.1.]

*Eligible ~~n~~Nonsubscription ~~t~~Transmission* has the same meaning as in 17 U.S.C. 114(j).

[Note: Capitalization of term to follow the style of 37 C.F.R. § 382.1.]

*Eligible Transmission* means a ~~subscription or nonsubscription transmission~~ Digital Audio Transmission made by a Licensee that is subject to licensing under 17 U.S.C. 114(d)(2) and the payment of royalties under this 37 CFR part 380.

[Note: Changes to conform to 37 C.F.R. § 382.1.]

*Ephemeral ~~Recording~~* has the same meaning as in 17 U.S.C. 112.

[Note: Capitalization of term to conform to 37 C.F.R. § 382.1.]

GAAP means generally accepted accounting principles in effect in the United States on the date payment is due.

[Note: Definition from 37 C.F.R. § 382.1. Included because GAAP is referred to in current § 380.3(b) (proposed to be renumbered § 380.4(b)).]

*Licensee* means a Commercial Webcaster, a Noncommercial Webcaster, a Noncommercial Educational Webcaster, a Public Broadcaster, or any entity operating a noninteractive Internet streaming service that has obtained a license under ~~Section 112 or 114 to transmit eligible sound recordings~~ 17 U.S.C. 114 to make Eligible Transmissions and a license under 17 U.S.C. 112(e) to make Ephemeral Recordings to facilitate those Eligible Transmissions.

[Note: References to Noncommercial Educational Webcaster and Public Broadcaster added to reflect SoundExchange's settlements with College Broadcasters, Inc. and National Public Radio, Inc. Other changes to conform to 37 C.F.R. § 382.1, except that Eligible Transmissions is capitalized to use the defined term.]

*New ~~s~~Subscription ~~s~~Service* has the same meaning as in 17 U.S.C. 114(j).

[Note: Capitalization of term to follow the style of 37 C.F.R. § 382.1.]

Noncommercial Educational Webcaster means a Noncommercial Educational Webcaster under subpart C of this part.

[Note: Term added to parallel the definition of Public Broadcaster and reflect SoundExchange's settlement with College Broadcasters, Inc.]

**Noncommercial ~~w~~Webcaster has the same meaning as in 17 U.S.C. 114(f)(~~54~~)(E), but excludes a Noncommercial Educational Webcaster or Public Broadcaster.**

**[Note: Capitalization of term to follow the style of 37 C.F.R. § 382.1. Cross reference changed to reflect renumbering of the paragraphs in Section 114(f) by the Music Modernization Act. Exclusion to reflect SoundExchange's settlements with College Broadcasters, Inc. and National Public Radio, Inc.]**

***Nonsubscription* has the same meaning as in 17 U.S.C. 114(j).**

**Payor means the entity required to make royalty payments to the Collective or the entity required to distribute royalty fees collected, depending on context. The Payor is:**

**(1) A Licensee, in relation to the Collective; and**

**(2) The Collective in relation to a Copyright Owner or Performer.**

**[Note: Definition from 37 C.F.R. § 382.1. Included because the term Payor is proposed to be inserted in § 380.7.]**

***Performance* means each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one listener), but excludes the following:**

**(1) A performance of a sound recording that does not require a license (*e.g.*, a sound recording that is not subject to protection under title 17, United States Code);**

**[Note: As revised by the Judges in their rulemaking under the Music Modernization Act. *See* 84 Fed. Reg. 32,296, 32,313 (July 8, 2019).]**

**(2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and**

**(3) An incidental performance that both:**

**(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty**



seconds or less in duration, or brief performances during sporting or other public events;  
and

(ii) Does not contain an entire sound recording, other than ambient music that is background at a public event, and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

*Performers* means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

*Public ~~b~~Broadcaster* means a ~~Covered Entity~~ Public Broadcaster under subpart D of this part.

[Note: Capitalization of term to follow the style of 37 C.F.R. § 382.1. Change from Covered Entity to Public Broadcaster to reflect SoundExchange's settlement with National Public Radio, Inc.]

*Qualified ~~a~~Auditor* means ~~an independent a~~ Certified Public Accountant licensed in the jurisdiction where it seeks to conduct a verification independent within the meaning of the American Institute of Certified Public Accountants Code of Professional Conduct.

[Note: Changes to conform to 37 C.F.R. § 382.1, except that the word "of" is inserted to correct the name of the AICPA.]

*Transmission* has the same meaning as in 17 U.S.C. 114(j)(15).

[Note: Change to conform to 37 C.F.R. § 382.1.]

*Verifying Entity* means the party requesting an audit and giving notice of intent to audit. For audits of Licensees, the Verifying Entity is SoundExchange, Inc. For audits of SoundExchange, Inc. the Verifying Entity is any Copyright Owner or Performer, or an authorized representative thereof.

[Note: Definition based on 37 C.F.R. § 382.1. Included because the term Verifying Entity is proposed to be inserted in § 380.7. Reference to Performers added to the definition from 37 C.F.R. § 382.1 to conform to the inclusion of Performers as potential auditing parties in the definition of Payor and both current 37 C.F.R. § 380.6(a) and 37 C.F.R. § 382.7(a).]

§ 380.12 Scope and compliance.

[Note: Section renumbered to reflect the movement of the definitions from § 380.7 to § 380.1.]

(a) *Scope.* Subparts A and B of this part codify rates and terms of royalty payments for the public performance of sound recordings in certain ~~digital transmissions~~ Digital Audio Transmissions by certain Licensees in accordance with the applicable provisions of 17 U.S.C. 114 and for the making of Ephemeral Recordings by those Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, ~~2016~~ 2021, through December 31, ~~2020~~ 2025.

[Note: Changes to conform to 37 C.F.R. § 382.2(a) and adjust the years as appropriate to this proceeding.]

(b) ~~*Limited application of terms and definitions.* The terms and definitions in Subpart A apply only to Subpart B, except as expressly adopted and applied in subpart C or subpart D of this part.~~

[Note: Deleted because SoundExchange SoundExchange's settlements with College Broadcasters, Inc. and National Public Radio, Inc. assume that the general provisions will apply to the extent consistent with the settlements.]

(~~eb~~) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 must comply with the requirements of 17 U.S.C. 112(e) and 114, this part ~~380~~ and any other applicable regulations.

[Note: Changes to conform to 37 C.F.R. § 382.2(b).]

(~~dc~~) *Voluntary agreements.* Notwithstanding the royalty rates and terms established in any subparts of this part ~~380~~, the rates and terms of any license agreements entered into by Copyright Owners and Licensees may apply in lieu of these rates and terms.

[Note: Change to conform to 37 C.F.R. § 382.2(c).]

#### **§ 380.23 Making payment of royalty fees.**

[Note: Section renumbered to reflect the movement of the definitions from § 380.7 to § 380.1.]

(a) *Payment to the Collective.* A Licensee must make the royalty payments due under ~~subpart B~~ this part to SoundExchange, Inc., which is the Collective designated by the Copyright Royalty Board to collect and distribute royalties under this part 380. If any payment due date is a weekend or a federal holiday, then the payment is due on the first business day thereafter.

[Note: Changes based on 37 C.F.R. § 382.3(a). Reference to this part, rather than subpart B, to reflect SoundExchange's settlements with College Broadcasters, Inc. and National Public Radio, Inc.]

(b) *Monthly payments.* ~~A Licensee must make royalty payments on a monthly basis. Payments are due on or before the 45th day after the end of the month in which the Licensee made Eligible Transmissions.~~

[Note: Provision relocated to § 380.3(c) to conform to 37 C.F.R. § 382.3.]

(e**b**) *Minimum payments.* A Licensee must make any minimum annual payments due under ~~S~~subpart B of this part by January 31 of the applicable license year. A Licensee that as of January 31 of any year has not made any ~~eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service~~ Eligible Transmissions, or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e), but that begins making such transmissions after that date must make any payment due by the 45th day after the end of the month in which the Licensee commences making such transmissions. The funds are nonrefundable. Any uncredited portion of the funds shall not carry over into a subsequent year.

[Note: Changes to the first sentence to conform to 37 C.F.R. § 382.3(c). It is not necessary to incorporate the first sentence of 37 C.F.R. § 382.3(b), because that sentence appears to be redundant. The second sentence revised to use the defined term Eligible Transmissions. The last two sentences added to conform to 37 C.F.R. § 382.3(b). (The ephemeral royalty split in 37 C.F.R. § 382.3(b) is addressed in § 380.10(d).)]

(c) *Monthly payments.* A Licensee must make royalty payments on a monthly basis. Payments are due on or before the 45th day after the end of the month in which the Licensee made Eligible Transmissions.

[Note: Provision relocated from § 380.3(b) to conform to 37 C.F.R. § 382.3.]

(d) *Late fees.* A Licensee must pay a late fee for each payment and each Statement of Account that the Collective receives after the due date. The late fee is 1.5%

(or the highest lawful rate, whichever is lower) of the late payment amount per month. The late fee for a late Statement of Account is 1.5% of the payment amount associated with the Statement of Account. Late fees accrue from the due date until the date that the Collective receives the late payment or late Statement of Account.

(1) *Waiver of late fees.* The Collective may waive or lower late fees for immaterial or inadvertent failures of a Licensee to make a timely payment or submit a timely Statement of Account.

(2) *Notice regarding noncompliant Statements of Account.* If it is reasonably evident to the Collective that a timely-provided Statement of Account is materially noncompliant, the Collective must notify the Licensee within 90 days of discovery of the noncompliance.

(e) *Use of account numbers.* If the Collective notifies a Licensee of an account number to be used to identify its royalty payments for a particular service offering, the Licensee must include that account number on its check or check stub for any payment for that service offering made by check, in the identifying information for any payment for that service offering made by electronic transfer, in its statements of account for that service offering under § 380.4, and in the transmittal of its Reports of Use for that service offering under § 370.4 of this chapter.

[Note: Use of account numbers to facilitate matching of payments, statements of account and reports of use based on proposals in docket number 14-CRB-0005 (RM). See 79 Fed. Reg. 25,038, 25,041 & n.6, 25,048 (May 2, 2014).]

#### **§ 380.34 Delivering statements of account.**

[Note: Section renumbered to reflect the movement of the definitions from § 380.7 to § 380.1.]

(a) *Statements of Account.* Any payment due under this ~~Ppart~~ **part 380** must be accompanied by a corresponding Statement of Account. In addition, a Licensee that has made a minimum annual payment for a year must submit to the Collective a statement of account showing the application of the minimum annual payment for each period for which it is required to submit a Report of Use under § 370.4 of this chapter but for which no further payment is due. Such a statement of account is due on or before the 45th day after the end of the relevant period. Any statement of account that must contain the following information:

[Note: Change in the first sentence to conform to 37 C.F.R. § 382.4(a). Second and third sentences proposed to facilitate accounting for the crediting of minimum annual payments.]

(1) ~~Such~~ Information as is necessary to calculate the accompanying royalty payment;

[Note: Change to conform to 37 C.F.R. § 382.4(a)(1).]

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the Statement of Account;

(3) The account number assigned to the Licensee by the Collective for the relevant service offering (if the Licensee has been notified of such account number by the Collective);

[Note: Use of account numbers to facilitate matching of payments, statements of account and reports of use based on proposals addressed in the NPRM in docket number 14-CRB-0005 (RM) See 79 Fed. Reg. 25,038, 25,041 & n.6, 25,048 (May 2, 2014).]

(4) The signature of:

(i) The Licensee or a duly authorized agent of the Licensee;

[Note: Change to conform to 37 C.F.R. § 382.4(a)(3)(i).]

(ii) A partner or delegate if the Licensee is a partnership; or

(iii) An officer of the corporation if the Licensee is a corporation;

[Note: Change to conform to 37 C.F.R. § 382.4(a)(3)(iii).]

~~(4)~~ The printed or typewritten name of the person signing the Statement of Account;

~~(5)~~ If the Licensee is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the Statement of Account;

**(67) A certification of the capacity of the person signing;**

**(78) The date of signature; and**

**(89) An attestation to the following effect:**

**I, the undersigned owner/officer/partner/agent of the Licensee have examined this Statement of Account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence and that it fairly presents, in all material respects, the liabilities of the Licensee pursuant to 17 U.S.C. 112(e) and 114 and applicable regulations adopted under those sections.**

**(b) *Certification.* Licensee's Chief Financial Officer or, if Licensee does not have a Chief Financial Officer, a person authorized to sign Statements of Account for the Licensee, must submit a signed certification on an annual basis attesting that Licensee's royalty statements for the prior year represent a true and accurate determination of the royalties due and that any method of allocation employed by Licensee was applied in good faith and in accordance with U.S. GAAP.**

**[Note: Change to use proposed defined term for GAAP.]**

**§ 380.45 Distributing royalty fees.**

**[Note: Section renumbered to reflect the movement of the definitions from § 380.7 to § 380.1.]**

**(a) *Distribution of royalties.* (1) The Collective must promptly distribute royalties received from Licensees to Copyright Owners and Performers that are entitled thereto, or to their designated agents. The Collective shall only be responsible for making distributions to those who provide the Collective with information as is necessary to identify and pay the correct recipient. The Collective must distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the Reports of Use requirements for Licensees pursuant to § 370.4 of this chapter and pursuant to this subpart part. However, in any case in which a Licensee has not provided a compliant Report of Use, and the board of directors of the Collective determines that further efforts to seek missing Reports of Use from the Licensee would not be warranted, the Collective may determine that it will distribute the royalties associated with the Licensee's missing Reports of Use on the basis of a proxy data set approved by the board of directors of the Collective.**

**[Note: Changes in the second and third sentences to conform to § 382.5(a)(1).**

Fourth sentence added based on proposed language for 37 C.F.R. § 370.6(b) in the NPRM in docket number 14-CRB-0005 (RM). *See* 79 Fed. Reg. 25,038, 25,049 (May 2, 2014).]

(2) *Identification of Copyright Owners.* The Collective must use its best efforts to identify and locate copyright owners and featured artists ~~in order~~ to distribute royalties payable to them under § section 112(e) or 114(d)(2) of title 17, United States Code, or both. Such efforts must include, but are not ~~be~~ limited to, searches in Copyright Office public records and published directories of sound recording copyright owners when consulting those records and directories is likely to be helpful.

[Note: Changes to conform to 37 C.F.R. § 382.5(a)(2).]

(b) *Unclaimed funds.* If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this part 380, the Collective must retain the required payment in a segregated trust account for a period of three years from the date of the first distribution of royalties from the relevant payment by a Licensee. No claim to distribution shall be valid after the expiration of the three-year period. After expiration of this period, the Collective ~~must handle unclaimed funds in accordance with applicable federal, state, or common law~~ may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3).

[Note: Change in the first sentence to conform to § 382.5(b). Change in the last sentence to revert to pre-*Web IV* language in view of Congress' specifying in Section 114(g)(7) (added by the Music Modernization Act) that state law (which includes common law) is preempted. *See* 79 Fed. Reg. 23102, 23130 (Apr. 25, 2014).]

(c) *Retention of records.* Licensees and the Collective shall keep books and records relating to payments and distributions of royalties for a period of not less than the prior three calendar years.

(d) *Designation of the Collective.* (1) The Judges designate SoundExchange, Inc., as the Collective to receive Statements of Account and royalty payments from Licensees and to distribute royalty payments to each Copyright Owner and Performer (or their respective designated agents) entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, ~~then~~ it shall be replaced for the applicable royalty ~~term~~ period by a successor Collective according to the following procedure:

[Note: Changes to conform to § 382.5(d)(2).]

(i) The nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding SoundExchange's cessation or dissolution shall vote by a majority to recommend that the Copyright Royalty Judges designate a successor and must file a petition with the Copyright Royalty Judges requesting that the Judges designate the named successor and setting forth the reasons therefor.

(ii) Within 30 days of receiving the petition, the Copyright Royalty Judges must issue an order designating the recommended Collective, unless the Judges find good cause not to make and publish the designation in the FEDERAL REGISTER.

**§ 380.56 Handling Confidential Information.**

[Note: Section renumbered to reflect the movement of the definitions from § 380.7 to § 380.1.]

(a) *Definition.* For purposes of this part 380, "Confidential Information" means the Statements of Account and any information contained therein, including the amount of royalty payments and the number of Performances, and any information pertaining to the Statements of Account reasonably designated as confidential by the party submitting the statement.

Confidential Information does not include documents or information that at the time of delivery to the Collective is public knowledge. The party seeking information from the Collective based on a claim that the information sought is a matter of public knowledge shall have the burden of proving to the Collective that the requested information is in the public domain.

[Note: Change to conform to § 382.6(a). Retained reference to number of Performances here, because it is relevant to part 380 but not part 382.]

(b) *Use of Confidential Information.* The Collective may not use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(c) *Disclosure of Confidential Information.* The Collective shall limit access to Confidential Information to:

(1) ~~Those~~ Employees, agents, consultants, and independent contractors of the Collective, subject to an appropriate written confidentiality agreement, who are



engaged in the collection and distribution of royalty payments hereunder and activities related directly thereto who require access to the Confidential Information for the purpose of performing their duties during the ordinary course of their work;

[Note: Change to conform to § 382.6(c)(1).]

(2) A Qualified Auditor or outside counsel who is authorized to act on behalf of:

(i) The Collective with respect to verification of a Licensee's statement of account pursuant to this part ~~380~~; or

[Note: Change to conform to § 382.6(c)(2)(i).]

(ii) A Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to this part ~~380~~;

[Note: Change to conform to § 382.6(c)(2)(ii).]

(3) Copyright Owners and Performers, including their designated agents, whose works a Licensee used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, subject to an appropriate written confidentiality agreement, and including those employees, agents, consultants, and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate written confidentiality agreement, who require access to the Confidential Information to perform their duties during the ordinary course of their work;

(4) Attorneys and other authorized agents of parties to proceedings under 17 U.S.C. ~~8~~, 112, or 114, acting under an appropriate protective order.

[Note: Changes to conform to § 382.6(c)(4).]

(d) *Safeguarding Confidential Information.* The Collective and any person authorized to receive Confidential Information from the Collective must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information.

**§ 380.67 Auditing payments and distributions.**

[Note: Section renumbered to reflect the movement of the definitions from § 380.7 to § 380.1.]

(a) *General.* This section prescribes procedures by which any entity entitled to receive payment or distribution of royalties may verify those payments or distributions ~~by auditing the payor or distributor~~ with an independent audit. The Collective may audit a Licensee's payments of royalties to the Collective, and a Copyright Owner or Performer may audit the Collective's distributions of royalties to the Copyright Owners or Performers. Nothing in this section shall preclude a ~~Verifying eEntity~~ and the ~~pPayor or distributor~~ under audit from agreeing to verification methods in addition to or different from those set forth in this section.

[Note: Changes to conform to § 382.7(a). Retained comma between independent clauses in the second sentence, because its omission in § 382.7(a) appears to be a typographical error.]

(b) *Frequency of auditing.* ~~The A~~ Verifying eEntity may conduct an audit of each licensee Payor's payments for a particular year only once, a year for and the audit may cover any or all of the prior three calendar years. A ~~Verifying eEntity~~ may not audit records for any calendar year more than once.

[Note: Reference to years revised to clarify that any particular year of payments may be audited only once. Other changes to conform to § 382.7(b).]

(c) *Notice of intent to audit.* The ~~Verifying eEntity~~ must file with the Copyright Royalty Judges a notice of intent to audit the ~~pPayor or distributor~~, which notice the Judges must publish in the FEDERAL REGISTER within 30 days of the filing of the notice. Simultaneously with the filing of the notice, the ~~Verifying eEntity~~ must ~~deliver~~ send a copy to the ~~pPayor or distributor~~.

[Note: Changes to conform to § 382.7(c).]

(d) *The audit.* The audit must be conducted during regular business hours by a Qualified Auditor who is not retained on a contingency fee basis and is identified in the notice. If the auditor sends the Payor a written request to conduct field work for the audit, the Payor must endeavor to schedule such field work for a date or dates within 30 days after the date of the request, and in any event must schedule such field work for a date or dates within 60 days after the date of the request. If the auditor sends the Payor a written request for information reasonably related to the audit, the Payor must promptly respond to the auditor if the Payor does not believe that the request is reasonable, in which case the

Payor and auditor must promptly endeavor to agree concerning the provision of reasonable information responsive to the auditor's reasonable purpose for seeking the information. The Payor must provide the auditor reasonable information responsive to the auditor's reasonable purpose for seeking additional information within 60 days after the date of the request. The auditor shall determine the accuracy of royalty payments or distributions, including whether the Payor made an underpayment or overpayment of royalties ~~was made~~. An audit of books and records, including underlying paperwork, performed in the ordinary course of business according to generally accepted auditing standards by a Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

[Note: Second through fourth sentences added to promote prompt completion of audits. Other changes to conform to § 382.7(d).]

(e) *Access to third-party records for audit purposes.* The ~~p~~Payor or distributor ~~under audit~~ must use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit.

[Note: Changes to conform to § 382.7(e).]

(f) *Duty of auditor to consult.* The auditor must produce a written report to the ~~v~~Verifying e~~Entity~~. Before ~~rendering~~ issuing the report, unless the auditor has a reasonable basis to suspect fraud on the part of the ~~p~~Payor or distributor, the disclosure of which would, in the reasonable opinion of the auditor, prejudice any investigation of the suspected fraud, the auditor must review tentative written findings of the audit with the appropriate agent or employee of the ~~p~~Payor or distributor in order to remedy any factual errors and clarify any issues relating to the audit; ~~P~~provided that an appropriate agent or employee of the ~~p~~Payor or distributor reasonably cooperates with the auditor to remedy promptly any factual error[s] or clarify any issues raised by the audit. The Payor must endeavor to provide its comments on the tentative written findings within 30 days after receiving them, and in any event must provide its comments on the tentative written findings within 60 days after receiving them. The auditor must include in the written report information concerning the cooperation or the lack thereof of the employee or agent. Throughout the audit process, the auditor may consult with the Verifying Entity, including to advise it concerning the status of the audit, request information relevant to the audit, and request the Verifying Entity's views concerning tentative findings and other issues.

[Note: Third sentence added to promote prompt completion of audits. Fifth sentence added to clarify the auditor's ability to consult with its client the Verifying Entity. Other changes to conform to § 382.7(f), except that the brackets are proposed to be deleted because they seem to be extraneous. The second sentence is

not broken in two to conform to § 382.7(f), because that appears to be a typographical error in § 382.7(f).]

(g) *Audit results; underpayment or overpayment of royalties.* If the auditor determines the ~~pPayor or distributor~~ underpaid royalties, the ~~pPayor or distributor~~ shall remit the amount of any underpayment determined by the auditor to the ~~vVerifying eEntity~~, together with interest at the rate specified in §380.23(d), accrued from and after the date the payment was originally due. In the absence of mutually-agreed payment terms, which may, but need not, include installment payments, the ~~pPayor or distributor~~ shall remit promptly to the ~~vVerifying eEntity~~ the entire amount of the underpayment determined by the auditor. If the auditor determines the ~~pPayor or distributor~~ overpaid royalties, however, the ~~vVerifying eEntity~~ shall not be required to remit the amount of any overpayment to the ~~pPayor or distributor~~, and the ~~pPayor or distributor~~ shall not seek by any means to recoup, offset, or take a credit for the overpayment, unless the ~~pPayor or distributor~~ and the ~~vVerifying eEntity~~ have agreed otherwise.

[Note: Changes to conform to § 382.7(g), except that SoundExchange proposes retaining the current reference to the interest rate for late payments in general (with a conforming change to the cross reference), rather than changing to the postjudgment rate in 28 U.S.C. 1961 as now specified in § 382.7(g).]

(h) *Paying the costs of the audit.* The ~~vVerifying eEntity~~ must pay the cost of the ~~verification procedure audit~~, unless the auditor determines that there was an underpayment of 10% or more, or the Payor does not provide information requested by the auditor that is in the possession of the Payor or a contractor to the Payor within 60 days after the date of the auditor's written request for that information, in which case the ~~pPayor or distributor~~ must bear the reasonable costs of the ~~verification procedure audit~~, in addition to paying or distributing the amount of any underpayment.

[Note: Reference to provision of information added to encourage Payors to cooperate in the audit process. Other changes to conform to § 382.7(h).]

(i) *Retention of audit report.* The ~~vVerifying eEntity~~ must retain the report of the audit for a period of not less than three years from the date of issuance.

[Note: Changes to conform to § 382.7(i). Current § 380.7 is proposed to be relocated to § 380.1 and is shown in marked form there rather than here.]

#### § 380.8 Reporting of ISRCs.

**Notwithstanding § 370.4(d)(2)(v) of this chapter, a Licensee must include in its Reports of Use the International Standard Recording Code (ISRC) for each sound recording transmitted, where available and feasible.**

[Note: Pursuant to 17 U.S.C. § 803(c)(3), SoundExchange proposes that the Judges adopt in this proceeding a new section with a term requiring webcasters to report ISRCs in their reports of use, notwithstanding the otherwise applicable notice and recordkeeping requirements.]

#### **Subpart B—Commercial Webcasters and Noncommercial Webcasters**

**§ 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.**

(a) ***Royalty fees.*** For the year ~~2019~~ **2021**, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

[Note: Change to reflect the first year of the new rate period.]

(1) ***Commercial webcasters:*** ~~\$0.0023~~ **\$0.0031** per ~~p~~**P**erformance for subscription services and ~~\$0.0018~~ **\$0.0028** per ~~p~~**P**erformance for nonsubscription services.

[Note: Changes to reflect SoundExchange's rate proposal. Performance capitalized to use defined term.]

(2) ***Noncommercial webcasters.*** ~~\$500~~ **\$1000** per year for each channel or station and ~~\$0.0018~~ **\$0.0028** per ~~p~~**P**erformance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

[Note: Rates changed to reflect SoundExchange's rate proposal. Performance capitalized to use defined term.]

(b) ***Minimum fee.*** Licensees must pay the Collective a minimum fee of ~~\$500~~ **\$1000** each year for each channel or station. The Collective must apply the fee to the Licensee's account as credit towards any additional royalty fees that Licensees may incur in the same year. The fee is payable for each individual channel and each individual station maintained or operated by the Licensee and making Eligible Transmissions during each calendar year or part of a calendar year during which it is a Licensee. The maximum aggregate minimum fee in any calendar year that a Commercial Webcaster must pay is ~~\$50,000~~ **\$100,000**. The minimum fee is nonrefundable.

[Note: Changes to reflect SoundExchange's rate proposal.]

(c) *Annual royalty fee adjustment.* The Copyright Royalty Judges shall adjust the royalty fees each year to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for ~~a~~All Urban eConsumers ~~and for all items~~) (CPI-U) published by the Secretary of Labor before December 1 of the preceding year. The adjusted rate shall be rounded to the nearest fourth decimal place. ~~To account more accurately for cumulative changes in the CPI-U over the rate period, t~~The calculation of the rate for each year shall be cumulative based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November, 2015 2020 (237.838 \_\_\_\_\_), according to the formula  $(1 + (C_y - 237.838 \text{ _____}) / 237.838 \text{ _____}) \times R_{2016 \text{ 2021}}$ , where  $C_y$  is the CPI-U published by the Secretary of Labor before December 1 of the preceding year, and  $R_{2016 \text{ 2021}}$  is the royalty rate for 2016 2021 (i.e., ~~\$0.0022~~ \$0.0031 per subscription ~~p~~Performance or ~~\$0.0017~~ \$0.0028 per nonsubscription ~~p~~Performance). By way of example, if the CPI-U published in November 2016 2021 is 242.083 \_\_\_\_\_, the adjusted rate for nonsubscription services in 2017 2022 will be computed as  $(1 + (242.083 \text{ _____} - 237.838 \text{ _____}) / 237.838 \text{ _____}) \times \$0.0017 \text{ } \$0.0028$  and will equal ~~\$0.00173~~ \$0.00 \_\_\_\_\_ (~~\$0.0017~~ \$0.00 \_\_\_\_\_ when rounded to the nearest fourth decimal place). If the CPI-U published in November 2017 2022 is 249.345 \_\_\_\_\_, the rate for nonsubscription services for 2018 2023 will be computed as  $(1 + (249.345 \text{ _____} - 237.838 \text{ _____}) / 237.838 \text{ _____}) \times \$0.0017 \text{ } \$0.0028$  and will equal ~~\$0.00179~~ \$0.00 \_\_\_\_\_ (~~\$0.0018~~ \$0.00 \_\_\_\_\_ when rounded to the nearest fourth decimal place). The Judges shall publish notice of the adjusted fees in the FEDERAL REGISTER at least 25 days before January 1. The adjusted fees shall be effective on January 1.

[Note: First sentence revised to reflect the full official name of the CPI-U. The reference to accounting more accurately removed, because it appears to be nonsubstantive, and it is unclear what the current regulation is being compared to. Performance capitalized to use defined term. The per-stream rate is based on SoundExchange's rate proposal. Calculations updated to reflect the coming rate period. Blanks to be completed based on CPI-U at the time of the determination.]

(d) *Allocation between Ephemeral recordings and performance royalty fees.* ~~The fee for all Ephemeral Recordings is part of the total fee payable under this section and constitutes 5% of it. The Collective must credit 5% of all royalty payments as payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All eEphemeral rRecordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions are included in the 5%.~~

[Note: Revisions based on 37 C.F.R. § 382.3(b), which more clearly than §§ 380.10(d), 382.10(b) or 382.21(b) states that overall payments are to be allocated between Ephemeral Recordings and performance royalties, except that this language is generalized to refer to all royalty payments. It does not seem necessary to repeat this allocation multiple times in the regulations for any one rate category. Ephemeral Recordings is capitalized to use the defined term.]

(e) **Reporting of excluded sound recordings. If the Licensee excludes any sound recordings it uses from its calculation of royalties (e.g., by not paying royalties on Performances thereof or excluding Performances thereof from its computation of ATH) on the basis that the Licensee believes it has a direct license of relevant rights from the Copyright Owner, the Licensee must provide the Collective, by no later than the due date for the relevant payment under §380.3(c), a list of each Copyright Owner from which the Licensee claims to have a direct license of rights to such sound recordings that is in effect for the relevant month and of each sound recording for which the Licensee makes such an exclusion, identified by featured artist name, sound recording title, and International Standard Recording Code (ISRC) number or, if the ISRC is not available or reporting of the ISRC is not feasible, album title and Copyright Owner name. Notwithstanding §380.6, the Collective may disclose such information as reasonably necessary for it to confirm whether a claimed direct license exists and claimed sound recordings are properly excludable.**

[Note: This provision is based on 37 C.F.R. § 382.23(a)(1)(ii), which has proven helpful for identifying errors when Licensees purport to rely on direct licenses. Consistent with SoundExchange's proposed § 380.8, reporting of album title and Copyright Owner name is permitted as an alternative to ISRC only where the ISRC is not available or its reporting is not feasible.]

[Subparts C and D to be as set forth in the joint motions concerning  
SoundExchange's settlements with College Broadcasters, Inc. and National

## SAMPLE LICENSE AGREEMENT

Agreement dated as of January 24, 2017 between The Executive Club Worldwide & Penalty/Red/Sony, c/o DMG Clearances, Inc., 13 Robin Drive Hockessin, DE 19707 ("Licensee"), on the one hand, and Tajai Music, Inc., c/o Shukat Arrow Hafer Weber & Herbsman LLP, 494 Eighth Avenue, 6<sup>th</sup> Floor, New York, NY 10001 ("Owner"), on the other hand.

1. Owner grants to Licensee the non-exclusive, worldwide, right and license to incorporate a \_\_\_\_\_ (\_\_\_\_) second percussion sample of the underlying musical composition entitled "Somebody Loves You Baby" (the "Original Song") in the musical composition and the master recording of the new composition "If It Ain't Me" (the "New Composition") as performed by the recording artist p/k/a Trina (the "Recording"), to be initially embodied on Trina's album entitled "6" (the "Album") tentatively scheduled for release in March 2017. For the avoidance of doubt, Licensee's rights in the Original Song are limited to manufacture, distribution and sale of the records via all methods of distribution, including digital download and streaming. Licensee may not make any other use of the Recording without Owner's express written consent (including, without limitation, the granting of any so-called "synchronization" licenses).

2. Subject to the terms and conditions contained herein, the term of this agreement shall be in perpetuity commencing on the date hereof.

3. (a) Licensee shall pay to Owner the sum of One Thousand Five Hundred (\$1,500.00) U.S. Dollars representing a non-recoupable, non-refundable advance payment to Owner recoupable from mechanical royalties due to Owner in connection with the exploitation of the New Composition hereunder (the "Fee").

(b) Owner and Licensee agree that Owner shall own a Thirty One and One Quarter percent (31.25%) interest (i.e. 41.67% of 75%) in the copyright of the New Composition, throughout the world, including any renewals or extensions thereof. Licensee shall register the copyright in the United States Copyright Office, listing the appropriate ownership claimants. Each party shall have the right to administer its own respective ownership percentage in the New Composition, which percentages are listed on Exhibit A, annexed hereto and made a part hereof.

4. (a) As additional consideration hereunder, Licensee shall pay to Owner 31.25% of the full statutory copyright rate per record for each record manufactured embodying the New Composition.

(b) Licensee shall account directly to Owner within forty-five (45) days following the end of each quarter-annual period (i.e., March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>). Payments shall be accompanied by statements separately detailing all domestic and international manufacture and distribution of records embodying the New Composition. Owner shall have the right to appoint a representative to audit Licensee's books and records, at Owner's expense, with respect to monies due pursuant to this agreement upon reasonable notice, during normal business hours at the place where such books and records are kept. In the event an audit results in a discrepancy in Owner's favor in excess of five (5%) percent, Licensee shall pay the costs of such audit.

(d) Licensee warrants and represents that the Fee provided to Licensor in paragraph 3(a) above and all other economic terms of this agreement as such terms affect Owner shall be



on a "most favored nations" basis with respect to the all other co-publishers of the New Composition.

5. Licensee agrees that Owner shall receive a courtesy credit in connection with all uses of the Recording hereunder. The credit shall read substantially as follows:

'Contains a sample of the composition "Somebody Loves You Baby" written by Eugene Curry. Used under license from Tajai Music Inc.'

6. Licensee and Owner warrant and represent that they each have the right to enter into this agreement and to make the recordings or grant the rights granted hereunder. Owner warrants and represents that it is the owner of the right, title and interest in and to the Original Song as described above, including, without limitation, the copyrights thereto, throughout the world. Licensee warrants and represents that all necessary permissions, licenses, and clearances have been obtained and that all costs incurred in the creation and production of the New Composition and the Recording have been paid and that neither the Recording, the New Composition, nor the performances embodied thereon nor any use thereof will violate or infringe upon the rights of any third parties. The parties hereto agree to defend, indemnify and hold each other harmless against any and all liability, loss, damage, cost or expense, including reasonable attorneys' fees, paid or incurred by reason of any breach of any covenants, warranties or representations hereunder. The indemnitor shall receive prompt written notice of any claim or action to which the indemnity applies and shall be given the reasonable opportunity to defend against said claim or action at its expense. The indemnified party shall not settle any claim or action without the prior written consent of the indemnitor, which consent shall not be unreasonably withheld.

7. The Original Song and all copyrights therein shall remain the sole and exclusive property of Owner and Licensee shall make no claim of ownership therein.

8. All notices hereunder shall be in writing and shall be given by personal delivery registered or certified mail, at the addresses shown above, or such other address or addresses as may be designated by written notice from the applicable party. Notices shall be deemed given when received.

9. This agreement contains the entire understanding of the parties hereto relating to the subject matter hereof and cannot be changed or terminated except by an instrument signed by Owner and Licensee. A waiver by either party of any term or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition in the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be a limitation of any other remedy, right, undertaking, obligation or agreement of either party.

10. In the event Licensee shall fail to make payment hereunder or shall fail to perform any other of its material obligations required of it hereunder, and Owner shall have notified Licensee in writing of such failure and Licensee shall not have cured such failure within fifteen (15) days after such written notification, Owner shall, without limitation to any rights of Owner at law, have the right to terminate this license.

11. This agreement has been entered into in the State of New York, and the validity, interpretation

and legal effect of this agreement shall be governed by the laws of the State of New York. The New York courts (State and Federal), only, will have jurisdiction of any controversies regarding this agreement; any action or other proceeding which involves such a controversy will be brought in those courts and not elsewhere. Any process in any such action or proceeding may, among other methods, be served upon a party by delivering it or mailing it, by registered or certified mail, directed to the address first above written or such other address as such party may designate pursuant to the provisions hereof. Any such delivery or mail service shall be deemed to have the same the same force and effect as personal service within the State of New York.

12. This agreement shall not be effective until all payments due upon execution have been received by Owner.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first hereinabove set forth.

TAJAI MUSIC INC.

By:   
\_\_\_\_\_

THE EXECUTIVE CLUB WORLDWIDE

By:   
\_\_\_\_\_

## Proof of Delivery

I hereby certify that on Thursday, November 21, 2019, I provided a true and correct copy of the MOTION FOR RE-CONSIDERATION TO THE ORDER DENYING RE-SUBMIT OF LATE DIRECT WRITTEN STATEMENT OF EUGENE CURRY DUE TO ABSENCE OF AN EXPLANATION OF A REASON FAILING TO MEET THE DEADLINE AND FAILURE TO SEEK EXTENSION OF TIME IN ADVANCE OF THE DEAD LINE to the following:

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at davidpowell008@yahoo.com

AARC, represented by Linda Bocchi, Esq, served via Electronic Service at lbocchi@aacroyalties.com

Signed: /s/ Eugene Curry Mr.